

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**
2 **OF THE STATE OF MONTANA**

3)
4 In the matter of the amendment of)
5 ARM 17.8.504, 17.8.505, 17.8.744 and)
6 17.8.1204 and the adoption of new)
7 rules I through IX pertaining to)
 establishing a registration system for)
 certain facilities that presently require)
 an air quality permit.)

**PRESIDING OFFICER
REPORT**

9 **INTRODUCTION**

10 1. On January 23, 2006, the undersigned presided over and conducted
11 the public hearing held in Room 152 of the State Capitol Building, Helena,
12 Montana, to take public comment on the above-captioned proposed amendments
13 and adoption of new rules. The amendments and new rules establish a registration
14 system in lieu of a permit system that applies to oil and gas well facilities. This is
15 allowed by HB 700 passed by the 2003 Montana Legislature, codified at Mont.
16 Code Ann. § 75-2-204. The proposed amendments and rule changes incorporating
17 the registration system in lieu of permitting is appropriate for source categories in
18 which there are a large number of homogenous sources subject to identical
19 requirements and for which there is no substantial benefit from individual
20 permitting.

21 The Notice of Public Hearing on Proposed Amendment, Repeal and
22 Adoption was contained in the 2005 Montana Administrative Register (MAR) No.
23 24, MAR Notice No. 17-238, published on December 22, 2005. A copy of the
24 notice is attached to this report. (Attachments are provided in the same order as
25 they are referenced in this report.)

26 2. The hearing began at 1:30 p.m. The hearing was transcribed by
27 Ms. Sherron Walstad of Helena, MT.

1 3. The undersigned announced that persons at the hearing would be
2 given an opportunity to submit their data, views, or arguments concerning the
3 proposed action, either orally or in writing. At the hearing, the undersigned also
4 identified and summarized the MAR notice, stated that copies of the MAR notice
5 were available in the hearing room, and read the Notice of Function of
6 Administrative Rule Review Committee as required by Mont. Code Ann. § 2-4-
7 302(7)(a). The rulemaking interested persons list and the opportunity to have names
8 placed on that list was addressed. Also referenced was the authority to make the
9 proposed rule amendments and adopt the new rules as well as the opportunity to
10 present matters at the hearing or in writing, as stated in the MAR notice. The order
11 of presentation of testimony was explained.

12 **SUMMARY OF HEARING**

13 4. Ms. Vickie Walsh, an Air Quality Specialist in the Montana
14 Department of Environmental Quality's Air Resources Management Bureau
15 presented written and oral testimony explaining the rule changes and possible
16 additional amendments to be incorporated in the final rule based on the record. She
17 recommended that the amended rules and proposed new rules be adopted as
18 proposed in the MAR notice and with the Department's amendments based on the
19 record.

20 5. Mr. David A. Galt, Executive Director of the Montana Petroleum
21 Association and Mr. Hal Robbins of Bison Engineering provided oral comments and
22 followed these up with written comments. They generally supported the registration
23 system but had suggestions for specific language changes pertaining to the operation
24 and permitting requirements for the source categories covered by the rules.

25 **SUMMARY OF WRITTEN MATERIALS**

26 6. After the hearing, written comments were received from the following
27 individuals all of whose comments were adequately summarized in the response to

1 comments prepared by the Department: Mr. David A. Galt, Executive Director of
2 the Montana Petroleum Association, Mr. Bob Dundas, Assistant Environmental
3 Coordinator of True Oil, LLC, Mr. Hal Robbins of Bison Engineering, Inc.
4 Mr. Scott Wallace of Devon Engineering, Mr. Scot A. Donato of the Bill Barrett
5 Corporation, Mr. Roger Kotschegarow of WBI Holdings, Inc., Mr. Richard Long of
6 the U. S. Environmental Protection Agency, Region 8. The written comments are
7 attached to this report.

8 The Department also submitted a memorandum from DEQ staff attorney,
9 Mr. David Rusoff with HB 521 and HB 311 reviews of the proposed amendments
10 and adoption of new rules together with a Private Property Assessment Act
11 Checklist. Mr. Rusoff's memorandum is attached to this report.

12 7. Mr. Rusoff concluded that HB 521 does not apply to these proposed
13 amendments and new rules since the rules are not more stringent than federal
14 regulations or guidelines.

15 8. With respect to HB 311 (the Private Property Assessment Act, Mont.
16 Code Ann. §§ 2-10-101 through 105), the State is required to assess the taking or
17 damaging implications of a proposed rule affecting the use of private real property.
18 This rulemaking affects the use of private real property. A Private Property
19 Assessment Act Checklist was prepared, which shows that the proposed
20 amendments and new rules do not have taking or damaging implications.
21 Therefore, no further assessment is required.

22 9. The period to submit comments ended at 5 p.m. on January 30, 2006.

23 **PRESIDING OFFICER COMMENTS**

24 10. The Board and the Department have jurisdiction to adopt and amend,
25 the amendments and rules referenced in this rulemaking pursuant to Mont. Code
26 Ann §§ 75-2-211, 75-2-220, 75-2-234,-75-2-217.

11. House Bill 521 (1995), codified in the Air Quality Act at Mont. Code Ann. §§ 75-2-11 and 75-2-207 generally provides that the Board may not adopt a rule that is more stringent than comparable federal regulations or guidelines, unless the Board makes written findings after public hearing and comment. The proposed amendments are not more stringent than a comparable federal regulation or guidelines. Therefore written findings are not necessary.

12. House Bill 311 (1995), the Private Property Assessment Act, codified as Mont. Code Ann. § 2-10-101 through -105, provides that a state agency must complete a review and impact assessment prior to taking an action with taking or damaging implications. The proposed amendments affect real property. A Private Property Assessment Act Checklist was prepared in this matter. The proposed amendments do not have direct taking or damaging implications for property. Therefore, no further HB 311 assessment is necessary.

13. The procedures required by the Montana Administrative Procedure Act, including public notice, hearing, and comment, have been followed.

14. The Board may adopt the proposed rule amendments and new rules, or reject them, or adopt the rule amendments and new rule with revisions not exceeding the scope of the public notice.

15. Under Mont. Code Ann. § 2-4-305(7), for the rulemaking process to be valid, the Board must publish a notice of adoption within six months of the date the Board published the notice of proposed rulemaking in the Montana Administrative Register, or by June 22, 2006.

Dated this _____ day of March, 2006.

KATHERINE J. ORR
Presiding Officer